objection is "waived," the power must be exercised very shortly after discovery of the facts. See *Grymes v. Sanders* (1876) 93 U. S. 55, 62; see *Fitzhugh v. Davis* (1885) 46 Ark. 337, 348. This view has been defended. See Ewart, *Waiver Distributed* (1917) 108. On the other hand, it has been urged that mere inaction on the part of the defrauded party was only evidence tending to show acquiescence. See Anson, *op. cit.*, 259. It is submitted that this is the sounder view.

TAXATION—INHERITANCE TAX—DEVISE PURSUANT TO CONTRACT.—The testatrix devised real estate to the plaintiffs pursuant to contract, the consideration being the plaintiffs' promise to support her for the rest of her life. After the testatrix's death the plaintiffs refused to pay the inheritance tax on the devise, petitioning that the executor be compelled to pay it out of the assets of the estate. The executor petitioned for authority to sell the devised real estate for the payment of the tax. *Held*, that the executor's petition be granted. *Richardson v. Lane* (1920, Mass.) 126 N. E. 44.

Where property is conveyed in consideration of the support of the grantor during his life, if it passes in possession and enjoyment as of the date of the conveyance, it is not subject to the inheritance tax. *Lamb v. Morrow* (1908) 140 Iowa, 89, 117 N. W. 1118. This is implied from the wording of the controlling statutes. See *Matter of Green* (1897) 153 N. Y. 223, 227, 47 N. E. 292, 293. If possession and enjoyment is not to take effect until after the grantor's death the tax may be imposed. *Matter of Brandreth* (1902) 169 N. Y. 437, 62 N. E. 563; *People v. Estate of Moir* (1904) 207 Ill. 180, 69 N. E. 905. A devise by will comes under the latter rule. In the instant case, although there was a contract to devise, yet the property actually passed by the will. *State v. Mollier* (1915) 96 Kan. 514, 152 Pac. 771; *Matter of Gould* (1898) 156 N. Y. 423, 51 N. E. 287. The state inheritance taxes are in the main computed on the value of each separate interest passing and are a charge against each share and against the person entitled thereto. *Estate of Chesney* (1905) 1 Calif. App. 30, 81 Pac. 679; see (1918) 27 YALE LAW JOURNAL, 1055. The executor is required to pay merely for convenience. See *Jackson v. Tailer* (1903, Sup. Ct.) 41 Misc. 36, 38, 83 N. Y. Supp. 567, 568. But the testator may direct that the tax be paid out of the general assets and exempt a particular devise or bequest from payment. *Kingsbury v. Bazeley* (1908) 75 N. H. 13, 70 Atl. 916. But this was not done in the present case, which is in accord with authority in holding that the property passed by will and hence is subject to the tax.

TAXATION—INHERITANCE TAX ON FOREIGN REALTY—"EQUITABLE CONVERSION."—The testatrix, domiciled in Iowa, left personalty and realty in Iowa and realty in Nebraska. To pay the bequests, which exceeded the value of the personalty, the executor sold part of the realty in Nebraska with the permission of the probate court of that state. The state of Iowa sought to tax the proceeds of this sale as part of the personalty passing by the will, under the doctrine of "equitable conversion." The executor opposed the tax on the ground that the proceeds not having been brought into Iowa were beyond the jurisdiction of the court. *Held*, that the state could tax such proceeds. *In re Sanford's Estate* (1919, Iowa) 175 N. W. 506.

The doctrine of "equitable conversion" is a fictional outgrowth of the maxim that equity considers that done which ought to be done. See *Connell v. Crosby* (1904) 210 Ill. 380, 390, 71 N. E. 359, 354; *cf.* (1917) 26 YALE LAW JOURNAL, 783. Being a rule of equity it should not be invoked to work inequity. On this theory it has been repudiated, even where its acceptance would benefit the state in which the court was sitting, as opening the way for double taxation. See *Matter of Estate of Swift* (1893) 137 N. Y. 77, 86, 32 N. E. 1096, 1098. And it

has also been refused application merely to subject property to taxation. See *McCurdy v. McCurdy* (1908) 197 Mass. 248, 250, 83 N. E. 881, 882. It would seem that the doctrine should not be invoked by an owner under contract to sell in order to exempt him from prosecution for unlawful use of the land or from liability for injuries resulting from its negligent condition. See *In re Baker's Estate* (1910, Surr. Ct.) 124 N. Y. Supp. 827, 828. If this be because the prosecution is an action at law, then logically in every case where suit is necessary to collect the succession tax the doctrine cannot be invoked in favor of the state. And courts which repudiate the doctrine so hold. *Matter of Estate of Swift, supra; cf. Connell v. Crosby, supra;* see Ross, *Inheritance Taxation* (1912) par. 54. But Iowa provides for enforcement of the tax by action at law. Supp. 1913, Code of Iowa, sec. 1481 a 17. In the present case the property was subject to tax in Nebraska as well as in Iowa. But it would seem that the Iowa tax could be defeated by the legatees (if *sui juris*) electing to take the land and thus preventing the conversion. Legatees have such a power of election. *Huber v. Donoghue* (1891, Ch.) 49 N. J. Eq. 125, 23 Atl. 495; see *Mellen v. Mellen* (1893) 139 N. Y. 210, 220, 34 N. E. 925, 928. If the doctrine is not universally applied, and the rule of the instant case is sound, the result may be double, single, or no taxation, depending on the law of the situs and the forum; if it is universally applied, or universally repudiated, the result is single taxation. But it is to be remembered that the courts of the situs have the *power* to disregard the rulings of the court of the domicil on equitable conversion, by ruling independently on an instrument purporting to have that effect, and thereby *effectively* re-regulating the succession. *Clarke v. Clarke* (1900) 178 U. S. 186, 20 Sup. Ct. 873. Should the law of the situs thus effectively refuse to recognize such conversion, it is hard to find justice in a tax laid by the domicil as if on personalty. If such tax is to be sustained, it should be by reference to and incorporation of the admittedly controlling law of the situs. This fact, together with the fictional nature both of the doctrine itself and of the rule *mobilia sequuntur personam,* lends much reason to the view that "it was never intended by the law to tax a theory having no real substance behind it." See *Matter of Curtis* (1894) 142 N. Y. 219, 223, 36 N. E. 887, 888.

TORTS—CIVIL CONSPIRACY—PHYSICIANS.—The defendant members of a medical association, an organization which no physician professing an exclusive system of medicine could join, agreed among themselves not to assist the plaintiff, an osteopath, in surgery. The plaintiff prayed that the defendants be enjoined from carrying out the agreement. *Held,* that an injunction should not be granted, since the defendants acted in good faith and with no intent to injure the plaintiff. *Harris v. Thomas* (1920, Tex.) 217 S. W. 1068.

The weight of authority holds that there is no such thing as a civil action for conspiracy. But an action for damages caused by acts resulting from a formed conspiracy is allowed. *Cf. Jones v. Monson* (1909) 137 Wis. 478, 119 N. W. 179; *cf. Bowen v. Matheson* (1867) 96 Mass. 499. It has been held that unless the acts which the conspirators combined to do would be tortious if done by one of them, they do not become tortious by reason of the conspiracy. *Green v. Davies* (1905) 182 N. Y. 499, 75 N. E. 536; *Porter v. Mack* (1901) 50 W. Va. 581, 40 S. E. 459; see (1916) 25 YALE LAW JOURNAL, 248. There is a tendency among modern legal writers to contend that there is a tort of conspiracy, and that the conspiracy itself is the gist of the action. See Burdick, *Conspiracy as a Crime and as a Tort* (1907) 7 COL. L. REV. 229; (1908) 8 *ibid.,* 117; Charlesworth, *Conspiracy as a Ground of Liability in Tort* (1920) 36 LAW QUART. REV. 38. However, there would seem to be very little reason or authority to back up this theory. Ordinarily the only difference between the civil "liability" for acts done in pursuance of a conspiracy and for acts of the same character done by a